

141438

**Philadelphia Suburban
Water Company**

762 Lancaster Avenue, Bryn Mawr, Pennsylvania 19010 215/645-1080

Mark J. Kropila
Corporate Counsel &
Assistant to the President

June 9, 1988

FEDERAL EXPRESS

Mr. Bruce Smith, Chief
Hazardous Waste Enforcement Branch
Environmental Protection Agency
3HW10
841 Chestnut Street
Philadelphia, PA 19107

Re: Henderson Road Superfund Site

Dear Sir:

Philadelphia Suburban Water Company (PSWC or Company) is an investor-owned public utility that provides water service to a large area of Montgomery, Delaware and Chester Counties in southeastern Pennsylvania. PSWC provides water service to approximately 850,000 people in a service territory that exceeds 330 square miles. The Company has been in existence for over 100 years and is proud of its outstanding record of providing water service to its customers.

PSWC obtains its water supply from a variety of sources, including the Schuylkill River, four impoundment reservoirs on rural streams and numerous wells. One of the Company's most innovative supply sources is the Upper Merion Reservoir (UMR) which was developed from a former quarry site that was purchased in 1967. Upper Merion Reservoir has 400 million gallons of usable storage and can provide our customers with up to 20 million gallons of water per day. It is an extremely important source of supply.

Unfortunately, the Upper Merion Reservoir has been subject to, and is being subject to, an influx of contaminants that emanate from certain industrial sites in the immediate area. One of the known sources of contaminants is the Henderson Road Superfund Site, which arose from the waste disposal methods undertaken on the O'Hara property. The potentially responsible parties for this site (PRPs) have finally completed their Remedial Investigation and Feasibility Study (RIFS), and EPA has prepared a proposed plan of action and is in the process of preparing its Record of Decision.

AR302271

PSWC has submitted comments to the RIFS prepared by the PRPs and the plan proposed by EPA. A copy of these comments is enclosed for your review. I will not attempt to summarize all of our comments, certainly not the technical comments, but I will emphasize the failure of EPA to consider the reimbursement of PSWC as part of the settlement in this case.

In 1983, PSWC installed aeration towers at the Upper Merion Reservoir to deal with the volatile organic compounds that had contaminated the raw water. This treatment method is now recognized by EPA as appropriate technology for dealing with VOCs. The capital cost of this installation was approximately \$1,000,000 and the operating costs are estimated at \$60,000 per year. Thus, PSWC has incurred approximately 1.3 million dollars over the past five years in addressing this problem. In the future, PSWC will also need to spend over \$500,000 for the capital costs of installing a powdered activated carbon treatment system as part of a proposed filtration plant. The estimated yearly operating costs will be nearly \$90,000 per year, exclusive of sludge removal costs which could easily triple this figure if the sludge was classified as a hazardous waste.

I must emphasize that the remedial effort undertaken by PSWC is the only activity taken to date that is actually protecting the public health. Even the Remedial Investigation Study (prepared by the PRPs) recognizes that "The UMR, in effect, is acting as a contaminated groundwater recovery and treatment system for a 2.4 square mile area that includes the Henderson Road site."

On June 3, 1988, representatives from PSWC met with EPA representatives Maureen Barden and Gerallyn Valls to discuss whether EPA would require the PRPs to reimburse PSWC for its past and prospective costs of treating the contaminated groundwater as part of a settlement of this case. I considered this request to be eminently reasonable and did not expect any serious opposition.

I expected that EPA would view itself as a partner with PSWC in a shared concern about safe drinking water. PSWC provided EPA and the PRPs with much of the technical water quality data upon which they based their studies. Furthermore, since EPA is pursuing a negotiated settlement between the parties for purposes of entering into a consent decree, I could not imagine any statutory restrictions on EPA's actions which would preclude consideration of our request.

I also expect that the PRPs, as good corporate citizens now aware of the effects of their actions, will welcome the chance to reimburse PSWC for its efforts in protecting the public health for the past five years. The efforts of PSWC avoided an emergency situation and worked to reduce the eventual financial exposure to the PRPs in the event the water supply had been

AR302272

abandoned. Along with cleaning up the site where the contaminants are most concentrated, reimbursement to PSWC would be the most cost-effective remedy for the groundwater contamination. In fact, at a meeting with representatives of the PRPs in November of 1987, I expressed dismay that they were not initially proposing to reimburse PSWC. The PRPs indicated that they fully expected EPA to request such a remedy in its reply.

In light of these reasonable expectations, I was extremely disappointed with the stated position of EPA at our meeting on June 3rd. Although the EPA representatives were very cordial, they indicated that upper level officials at EPA had decided that the agency would not include reimbursement for PSWC in negotiations with the PRPs. As I recall, two reasons were offered in support of this conclusion, although I am still unable to see merit in either one.

The first reason was that the new focus of EPA's effort in superfund sites is on "permanent source control remedies". PSWC does not oppose this effort; but it should not be used to exclude other remedies. We raised the hypothetical example of an injection well (on a small parcel of land on the top of a hill) that discharges into a fast-moving groundwater supply. Obviously, in such a case, the exclusive focus could not be on cleaning up the site if the bulk of the contamination had migrated off the site. Furthermore, if the focus is to implement permanent remedies at the source, then EPA and the PRPs should have immediately removed the free product that was discovered in well HR-2-195, rather than doing nothing to recover the contaminants in the single-minded pursuit of conducting further investigations and studies. We foresee that a rigid adherence to a policy exclusively targeting "source control" will result in actions as unjust and wasteful as those the policy may have been intended to avoid. Such a policy will inevitably have to be modified at some point. Therefore, we cannot passively accept denial of our request solely on the basis of such a policy.

The second reason appeared to be an internal policy of EPA to deny reimbursement to private water companies. Such a policy would appear to be discriminatory and contrary to known precedent. EPA's proposed plan would require the PRPs to pay for the treatment of the well supply at the McIlvain Lumber Yard for the benefit of 15 employees, but provides no restitution for PSWC in treating the water source used to supply hundreds of thousands of people. This comparison demonstrates the inconsistency of such a policy. I would hate to think that PSWC is being penalized for doing a good job, responding quickly to remedy the problem while others delayed taking substantive action.

In light of our inability to understand the position taken by EPA, I am hereby requesting a full explanation of why PSWC is not being considered for reimbursement as part of the negotiated settlement in this case. I would like to receive a copy of, or explanation of, all relevant statutes, regulations, internal

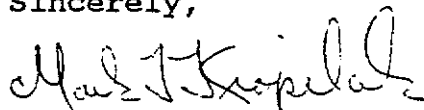
AR302273

policies and memoranda that support your position. Also, I would like to receive a list of all superfund sites where water companies were reimbursed for their expenses and a list of cases where water companies were denied requests for reimbursement under EPA's current policy. I would hope that this information could be provided to me within one week, so that we can set up a meeting with EPA officials to discuss this matter the following week.

In addition, if EPA is unwilling to change its position, I would like to receive your suggestions as to what PSWC should do to pursue its claim in this case. I recognize that a lawsuit by PSWC against various parties is possible, but would it not, to a large extent, duplicate the investigation already undertaken by EPA in this case? I also recognize that at least one other source contributes contamination to Upper Merion Reservoir, namely the Kessler site. (I have been advised by PSWC officials that EPA representatives previously indicated that reimbursement would be considered in connection with the Kessler site.) EPA is the sole agency that can bring pressure to bear on the various parties to the superfund sites in the area to develop a comprehensive and complete resolution of the contamination at the Upper Merion Reservoir. The PRPs in the Henderson Road Site should be forced to address this issue at this time, and can subsequently allocate the costs among themselves or other parties as they see fit. PSWC should not be required to pursue each individual party in a separate action.

I think most people believe that EPA was established and the Superfund law was enacted to provide our citizens with a means of protection from, and restitution for, groundwater pollution. This case has assumed too much importance for us to stop short of a satisfactory answer.

Sincerely,



Mark J. Kropilak

cc: Mr. James Seis, Region III Administrator
Mr. Bruce Diamond, Regional Counsel
Maureen Barden, Esq.
Gerallyn Downes-Valls
Preston Luitweiler

AR302274